

REFERENCE TITLE: orders of protection; service

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

## **SB 1342**

Introduced by  
Senator Huppenthal

AN ACT

AMENDING SECTION 13-3602, ARIZONA REVISED STATUTES; RELATING TO ORDERS OF PROTECTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3602, Arizona Revised Statutes, is amended to  
3 read:

4 13-3602. Order of protection; procedure; contents; arrest for  
5 violation; penalty; protection order from another  
6 jurisdiction

7 A. A person may file a verified petition, as in civil actions, with a  
8 magistrate, justice of the peace or superior court judge for an order of  
9 protection for the purpose of restraining a person from committing an act  
10 included in domestic violence. If the person is a minor, the parent, legal  
11 guardian or person who has legal custody of the minor shall file the petition  
12 unless the court determines otherwise. The petition shall name the parent,  
13 guardian or custodian as the plaintiff and the minor is a specifically  
14 designated person for the purposes of subsection G of this section. If a  
15 person is either temporarily or permanently unable to request an order, a  
16 third party may request an order of protection on behalf of the plaintiff.  
17 After the request, the judicial officer shall determine if the third party is  
18 an appropriate requesting party for the plaintiff. For the purposes of this  
19 section, notwithstanding the location of the plaintiff or defendant, any  
20 court in this state may issue or enforce an order of protection.

21 B. An order of protection shall not be granted:

22 1. Unless the party who requests the order files a written verified  
23 petition for an order.

24 2. Against a person who is less than twelve years of age unless the  
25 order is granted by the juvenile division of the superior court.

26 3. Against more than one defendant.

27 C. The petition shall state the:

28 1. Name of the plaintiff. The plaintiff's address shall be disclosed  
29 to the court for purposes of service. If the address of the plaintiff is  
30 unknown to the defendant, the plaintiff may request that the address be  
31 protected. On the plaintiff's request, the address shall not be listed on  
32 the petition. Whether the court issues an order of protection, the protected  
33 address shall be maintained in a separate document or automated database and  
34 is not subject to release or disclosure by the court or any form of public  
35 access except as ordered by the court.

36 2. Name and address, if known, of the defendant.

37 3. Specific statement, including dates, of the domestic violence  
38 alleged.

39 4. Relationship between the parties pursuant to section 13-3601,  
40 subsection A and whether there is pending between the parties an action for  
41 maternity or paternity, annulment, legal separation or dissolution of  
42 marriage.

43 5. Name of the court in which any prior or pending proceeding or order  
44 was sought or issued concerning the conduct that is sought to be restrained.

45 6. Desired relief.

1 D. A fee shall not be charged for filing a petition under this section  
2 or for service of process. ~~On request of the plaintiff, each order of~~  
3 ~~protection that is issued by a municipal court shall be served by the police~~  
4 ~~agency for that city if the defendant can be served within the city. If the~~  
5 ~~defendant cannot be served within the city, the police agency in the city in~~  
6 ~~which the defendant can be served shall serve the order. If the order cannot~~  
7 ~~be served within a city, the sheriff shall serve the order. On request of~~  
8 ~~the plaintiff, each order of protection that is issued by a justice of the~~  
9 ~~peace shall be served by the constable or sheriff for that jurisdiction if~~  
10 ~~the defendant can be served within the jurisdiction. If the defendant cannot~~  
11 ~~be served within that jurisdiction, the constable or sheriff in the~~  
12 ~~jurisdiction in which the defendant can be served shall serve the order. On~~  
13 ~~request of the plaintiff, each order of protection that is issued by a~~  
14 ~~superior court judge or commissioner shall be served by the sheriff of the~~  
15 ~~county. If the defendant cannot be served within that jurisdiction, the~~  
16 ~~sheriff in the jurisdiction in which the defendant can be served shall serve~~  
17 ~~the order.~~ Each court shall provide, without charge, forms for purposes of  
18 this section for assisting parties without counsel. The court shall make  
19 reasonable efforts to provide to both parties an appropriate information  
20 sheet on emergency and counseling services that are available in the local  
21 area.

22 E. The court shall review the petition, any other pleadings on file  
23 and any evidence offered by the plaintiff to determine whether the orders  
24 requested should issue without further hearing. The court shall issue an  
25 order of protection under subsection G of this section if the court  
26 determines that there is reasonable cause to believe any of the following:

- 27 1. The defendant may commit an act of domestic violence.  
28 2. The defendant has committed an act of domestic violence within the  
29 past year or within a longer period of time if the court finds that good  
30 cause exists to consider a longer period.

31 F. For purposes of determining the period of time under subsection E,  
32 paragraph 2 of this section, any time that the defendant has been  
33 incarcerated or out of this state shall not be counted. If the court denies  
34 the requested relief, it may schedule a further hearing within ten days, with  
35 reasonable notice to the defendant.

36 G. If a court issues an order of protection, the court may do any of  
37 the following:

- 38 1. Enjoin the defendant from committing a violation of one or more of  
39 the offenses included in domestic violence.

- 40 2. Grant one party the use and exclusive possession of the parties'  
41 residence on a showing that there is reasonable cause to believe that  
42 physical harm may otherwise result. If the other party is accompanied by a  
43 law enforcement officer, the other party may return to the residence on one  
44 occasion to retrieve belongings. A law enforcement officer is not liable for

any act or omission in the good faith exercise of the officer's duties under this paragraph.

3. Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons on a showing that there is reasonable cause to believe that physical harm may otherwise result.

4. If the court finds that the defendant is a credible threat to the physical safety of the plaintiff or other specifically designated persons, prohibit the defendant from possessing or purchasing a firearm for the duration of the order. If the court prohibits the defendant from possessing a firearm, the court shall also order the defendant to transfer any firearm owned or possessed by the defendant immediately after service of the order to the appropriate law enforcement agency for the duration of the order. If the defendant does not immediately transfer the firearm, the defendant shall transfer the firearm within twenty-four hours after service of the order.

5. If the order was issued after notice and a hearing at which the defendant had an opportunity to participate, require the defendant to complete a domestic violence offender treatment program that is provided by a facility approved by the department of health services or a probation department or any other program deemed appropriate by the court.

6. Grant relief that is necessary for the protection of the alleged victim and other specifically designated persons and that is proper under the circumstances.

H. The court shall not grant a mutual order of protection. If opposing parties separately file verified petitions for an order of protection, the courts after consultation between the judges involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross orders of protection.

I. At any time during the period during which the order is in effect, a party WHO IS under an order of protection or WHO IS restrained from contacting the other party is entitled to one hearing on written request. No fee may be charged for requesting a hearing. A hearing that is requested by a party who is under an order of protection or who is restrained from contacting the other party shall be held within ten days from the date requested unless the court finds good cause to continue the hearing. If exclusive use of the home is awarded, the hearing shall be held within five days from the date requested. The hearing shall be held at the earliest possible time. An ex parte order that is issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the court may modify, quash or continue the order.

J. The order shall include the following statement:

Warning

This is an official court order. If you disobey this order, you may be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

K. A copy of the petition and the order shall be served on the defendant within one year from the date the order is signed. An order of protection that is not served on the defendant within one year expires. An order is effective on the defendant on service of a copy of the order and petition. An order expires one year after service on the defendant. A modified order is effective ~~upon~~ ON service and expires one year after service of the initial order and petition.

L. Each affidavit, acceptance or return of service shall be promptly filed with the clerk of the issuing court. This filing shall be completed in person, shall be made by fax or shall be postmarked, if sent by mail, no later than the end of the seventh court business day after the date of service. If the filing is made by fax, the original affidavit, acceptance or return of service shall be promptly filed with the court. Within twenty-four hours after the affidavit, acceptance or return of service has been filed, excluding weekends and holidays, the court from which the order or any modified order was issued shall forward to the sheriff of the county in which the court is located a copy of the order of protection and a copy of the affidavit or certificate of service of process or acceptance of service. On receiving these copies, the sheriff shall register the order. Registration of an order means that a copy of the order of protection and a copy of the affidavit or acceptance of service have been received by the sheriff's office. The sheriff shall maintain a central repository for orders of protection so that the existence and validity of the orders can be easily verified. The effectiveness of an order does not depend on its registration, and for enforcement purposes pursuant to section 13-2810, a copy of an order of the court, whether or not registered, is presumed to be a valid existing order of the court for a period of one year from the date of service of the order on the defendant.

M. A peace officer, with or without a warrant, may arrest a person if the peace officer has probable cause to believe that the person has violated section 13-2810 by disobeying or resisting an order that is issued in any jurisdiction in this state pursuant to this section, whether or not such violation occurred in the presence of the officer. Criminal violations of an order issued pursuant to this section shall be referred to an appropriate law enforcement agency. The law enforcement agency shall request that a prosecutorial agency file the appropriate charges. A violation of an order of protection shall not be adjudicated by a municipal or justice court unless a complaint has been filed or other legal process has been requested by the prosecuting agency. The provisions for release under section 13-3883,

1 subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made  
2 pursuant to this section. For purposes of this section, any court in this  
3 state has jurisdiction to enforce a valid order of protection that is issued  
4 in this state and that has been violated in any jurisdiction in this state.

5 N. A person who is arrested pursuant to subsection M of this section  
6 may be released from custody in accordance with the Arizona rules of criminal  
7 procedure or any other applicable statute. An order for release, with or  
8 without an appearance bond, shall include pretrial release conditions that  
9 are necessary to provide for the protection of the alleged victim and other  
10 specifically designated persons and may provide for any other additional  
11 conditions that the court deems appropriate, including participation in any  
12 counseling programs available to the defendant.

13 O. The remedies provided in this section for enforcement of the orders  
14 of the court are in addition to any other civil and criminal remedies  
15 available. The superior court shall have exclusive jurisdiction to issue  
16 orders of protection in all cases if it appears from the petition that an  
17 action for maternity or paternity, annulment, legal separation or dissolution  
18 of marriage is pending between the parties. A municipal court or justice  
19 court shall not issue an order of protection if it appears from the petition  
20 that an action for maternity or paternity, annulment, legal separation or  
21 dissolution of marriage is pending between the parties. After issuance of an  
22 order of protection, if the municipal court or justice court determines that  
23 an action for maternity or paternity, annulment, legal separation or  
24 dissolution of marriage is pending between the parties, the municipal court  
25 or justice court shall stop further proceedings in the action and forward all  
26 papers, together with a certified copy of docket entries or any other record  
27 in the action, to the superior court where they shall be docketed in the  
28 pending superior court action and shall proceed as though the petition for an  
29 order of protection had been originally brought in the superior court.  
30 Notwithstanding any other law and unless prohibited by an order of the  
31 superior court, a municipal court or justice court may hold a hearing on all  
32 matters relating to its ex parte order of protection if the hearing was  
33 requested before receiving written notice of the pending superior court  
34 action. No order of protection shall be invalid or determined to be  
35 ineffective merely because it was issued by a lower court at a time when an  
36 action for maternity or paternity, annulment, legal separation or dissolution  
37 of marriage was pending in a higher court. After a hearing with notice to  
38 the affected party, the court may enter an order requiring any party to pay  
39 the costs of the action, including reasonable attorney fees, if any. An  
40 order that is entered by a justice court or municipal court after a hearing  
41 pursuant to this section may be appealed to the superior court as provided in  
42 title 22, chapter 2, article 4, section 22-425, subsection B and the superior  
43 court rules of civil appellate procedure without regard to an amount in  
44 controversy. No fee may be charged to either party for filing an  
45 appeal. For the purposes of this subsection, "pending" means, with respect

1 to an action for annulment, legal separation or dissolution of marriage or  
2 for maternity or paternity, either that:

3 1. An action has been commenced but a final judgment, decree or order  
4 has not been entered.

5 2. A post-decree proceeding has been commenced but a judgment, decree  
6 or order finally determining the proceeding has not been entered.

7 P. A peace officer who makes an arrest pursuant to this section or  
8 section 13-3601 is not civilly or criminally liable for the arrest if the  
9 officer acts on probable cause and without malice.

10 Q. In addition to persons authorized to serve process pursuant to rule  
11 4(d) of the Arizona rules of civil procedure, a peace officer or a  
12 correctional officer as defined in section 41-1661 who is acting in the  
13 officer's official capacity may serve an order of protection that is issued  
14 pursuant to this section. Service of the order of protection has priority  
15 over other service of process that does not involve an immediate threat to  
16 the safety of a person.

17 R. ON ISSUANCE OF THE ORDER OF PROTECTION, IF THE ORDER IS TO BE  
18 SERVED BY A PEACE OFFICER, ON REQUEST OF THE PLAINTIFF THE ORDER SHALL BE  
19 SERVED AS FOLLOWS:

20 1. IF THE ORDER IS ISSUED BY THE SUPERIOR COURT, BY THE SHERIFF OF THE  
21 COUNTY IN WHICH THE DEFENDANT IS LOCATED.

22 2. IF THE ORDER IS ISSUED BY A MUNICIPAL COURT, BY THE MUNICIPAL  
23 POLICE AGENCY FOR THE CITY IN WHICH THE DEFENDANT IS LOCATED, OR IF THE  
24 DEFENDANT CANNOT BE SERVED WITHIN A CITY, BY THE SHERIFF OF THE COUNTY IN  
25 WHICH THE DEFENDANT IS LOCATED.

26 3. IF THE ORDER IS ISSUED BY A JUSTICE COURT, BY THE CONSTABLE FOR THE  
27 PRECINCT IN WHICH THE DEFENDANT IS LOCATED OR THE SHERIFF OF THE COUNTY IN  
28 WHICH THE DEFENDANT IS LOCATED.

29 S. IN ADDITION TO THE SERVICE REQUIREMENTS OF SUBSECTION R OF THIS  
30 SECTION, THE FOLLOWING APPLY:

31 1. ANY LAW ENFORCEMENT AGENCY IN THE JURISDICTION IN WHICH THE  
32 DEFENDANT IS LOCATED MAY SERVE AN ORDER OF PROTECTION.

33 2. IF THE COURT FINDS THAT IT IS IN THE BEST INTEREST OF JUSTICE AND  
34 PUBLIC SAFETY, THE COURT MAY ORDER THAT THE ORDER OF PROTECTION BE SERVED BY  
35 THE MUNICIPAL POLICE AGENCY, COUNTY SHERIFF OR CONSTABLE WITHIN THE  
36 JURISDICTION IN WHICH THE DEFENDANT IS LOCATED.

37 ~~R.~~ T. A valid protection order that is related to domestic or family  
38 violence and that is issued by a court in another state, a court of a United  
39 States territory or a tribal court shall be accorded full faith and credit  
40 and shall be enforced as if it were issued in this state for as long as the  
41 order is effective in the issuing jurisdiction. For the purposes of this  
42 subsection:

43 1. A protection order includes any injunction or other order that is  
44 issued for the purpose of preventing violent or threatening acts or  
45 harassment against, contact or communication with or physical proximity to

1 another person. A protection order includes temporary and final orders other  
2 than support or child custody orders that are issued by civil and criminal  
3 courts if the order is obtained by the filing of an independent action or is  
4 a pendente lite order in another proceeding. The civil order shall be issued  
5 in response to a complaint, petition or motion that was filed by or on behalf  
6 of a person seeking protection.

7 2. A protection order is valid if the issuing court had jurisdiction  
8 over the parties and the matter under the laws of the issuing state, a United  
9 States territory or an Indian tribe and the person against whom the order was  
10 issued had reasonable notice and an opportunity to be heard. If the order is  
11 issued ex parte, the notice and opportunity to be heard shall be provided  
12 within the time required by the laws of the issuing state, a United States  
13 territory or an Indian tribe and within a reasonable time after the order was  
14 issued.

15 3. A mutual protection order that is issued against both the party who  
16 filed a petition or a complaint or otherwise filed a written pleading for  
17 protection against abuse and the person against whom the filing was made is  
18 not entitled to full faith and credit if either:

19 (a) The person against whom an initial order was sought has not filed  
20 a cross or counter petition or other written pleading seeking a protection  
21 order.

22 (b) The issuing court failed to make specific findings supporting the  
23 entitlement of both parties to be granted a protection order.

24 4. A peace officer may presume the validity of and rely on a copy of a  
25 protection order that is issued by another state, a United States territory  
26 or an Indian tribe if the order was given to the officer by any source. A  
27 peace officer may also rely on the statement of any person who is protected  
28 by the order that the order remains in effect. A peace officer who acts in  
29 good faith reliance on a protection order is not civilly or criminally liable  
30 for enforcing the protection order pursuant to this section.